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September 17, 2021

VIA E-FILING

Ms. Jocelyn D. Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Application of Palmetto Wastewater Reclamation, Inc. for Adjustment of
Rates and Charges (Increase) and Terms and Conditions of Sewer Service
Docket No. 2021-153-S

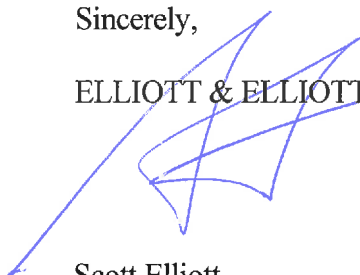
Dear Ms. Boyd:

Enclosed please find for filing the Return to Office of Regulatory Staff's Motion to Compel on behalf of Palmetto Wastewater Reclamation, Inc. in the above-referenced docket. By copy of this correspondence, I am serving all parties of record.

If you have any questions, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.



Scott Elliott

SE/lbk

cc: All parties of record (via Electronic Mail)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2021-153-S

IN RE: Application of Palmetto Wastewater)	
Reclamation, Inc. for Adjustment of Rates)	RETURN TO OFFICE OF REGULATORY STAFF'S MOTION TO COMPEL
and Charges (Increase) and Terms and)	
Conditions of Sewer Service)	

The Applicant herewith, Palmetto Wastewater Reclamation ("PWR"), makes its return to the Motion to Compel served by the Office of Regulatory Staff (ORS) on September 7, 2021. For the reasons set out below, the Commission should deny the ORS motion.

INTRODUCTION

The ORS served its Request for Books, Records, and Other Information in the above proceeding on July 21, 2021. Included in the data request was ORS's Request 6-7, seeking copies of the minutes of SouthWest Water Company's ("SWWC") Board of Directors meetings held in 2019, 2020 and 2021.¹ Request 6-8 asked for copies of all presentations made to SWWC's Board during calendar years 2019, 2020 and 2021. PWR objected to Requests 6-7 and 6-8 on the basis that the requests were overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

¹ SWWC, PWR's corporate parent company, is not a public utility subject to the Public Service Commission's ("Commission") jurisdiction or regulation. It has heretofore voluntarily made requested documents available to PWR.

In a good faith effort to resolve this discovery dispute, PWR agreed to provide ORS with the minutes and presentations for SWWC's Board meetings for 2020, the test year, and did so on August 27, 2021, by producing more than 400 pages of documents. In fact, given the ORS' stated interest in wanting to better understand SWWC's decisions, PWR also produced the unanimous written consents ("UWCs") of the SWWC Board in 2020, *i.e.*, actions taken by the Board by written consent in lieu of a meeting.

Moreover, in connection with its production of the 2020 SWWC Board meeting minutes and presentations and UWCs – in a further demonstration of its good faith effort to resolve this discovery dispute – PWR also offered to review the 2019 SWWC Board meeting minutes and presentations and produce any portions of those documents that referred to PWR or its then corporate parents.² On September 3, 2021, PWR followed through by producing the three (3) pages of the 2019 SWWC Board meeting minutes and presentations that had any references to PWR or its then parent entities.³ Notably, there were no references at all to PWR in any of the 2019 documents and only passing references to PWR's parent entities.

In producing the 427 pages of 2020 documents and 3 pages of 2019 documents, PWR maintained its original objections to the requests. As such, PWR renewed its objections to Requests 6-7 and 6-8 as seeking information that is irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. PWR further objected to Requests 6-7 and 6-8 to the extent these requests sought confidential information.

² SWWC acquired PWR through the acquisition of PWR's parent company on September 14, 2020.

³ These documents were redacted to exclude references to confidential information that did not relate to PWR or its then parent.

ARGUMENT

The ORS motion to compel seeks an order of the Commission requiring PWR to produce all of its parent company's 2019 Board meeting minutes and presentations without any limitations whatsoever. The South Carolina Supreme Court has acknowledged that discovery in South Carolina is broad. Rule 26(b)(1), SCRCF provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the the pending action...[and][i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26, SCRCF applies to discovery in matters pending before the Commission.⁴

However, in construing Rule 26, SCRCF, our Supreme Court has not hesitated to strike down discovery requests that are not relevant to the resolution of the matter at hand. *Oncology and Hematology Associates of S.C., LLC v. Department of Health and Environmental Control*, 387 S.C. 380, 692 S.E.2d 920 (2010). The Supreme Court's decision in *Oncology and Hematology Associates of S.C., LLC v. Department of Health and Environmental Control*, favorably quoted the following language from *In re CSX Corp.*, 124 S.W.3d 149 (2003):

Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.' ...Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters. 387 S.C. 388.

⁴ ORS cites Rule 26 SCRCF as authority for its motion to compel.

When examined against the backdrop of the Supreme Court holding in *Oncology and Hematology Associates of S.C., LLC v. Department of Health and Environmental Control*, the ORS motion to compel production of SWWC’s 2019 Board meeting minutes and presentation materials (“2019 Materials”) fails. Critically, the ORS has failed to articulate any compelling reason demonstrating its need for the 2019 Materials. The ORS has failed to demonstrate that its requests are “reasonably tailored” to seek only relevant matters because SWWC did not acquire PWR’s parent until September 14, 2020. Because SWWC did not own PWR in 2019 and because the pending rate application relies on a 2020 test year, the ORS discovery requests are not remotely relevant to the issues in dispute in this rate case.

The ORS argues that the SWWC Board provides the direction, strategic vision and guidance, business strategy and development, executive management, and oversight of the parent company, SWWC. The ORS suggests that the 2019 Materials will provide information on a number of subjects, including operational decisions, capital expenditures, projected growth and new debt filings or capital infusions and potential litigation. While the ORS may have an interest in understanding SWWC’s decision making process, the critical flaw in the ORS’s assertions is that SWWC did not own PWR in 2019; as such, SWWC’s 2019 operational decisions – which neither related to nor affected PWR – cannot and do not inform the ORS or the Commission of relevant evidence. Moreover, documents relating to the SWWC corporate decisions in 2019 will not shed light on the 2020 test year expenditures and will not lead to any relevant evidence pertaining to the costs and expenses underlying the rate case application. Rates are set on known and measurable prudently incurred costs.

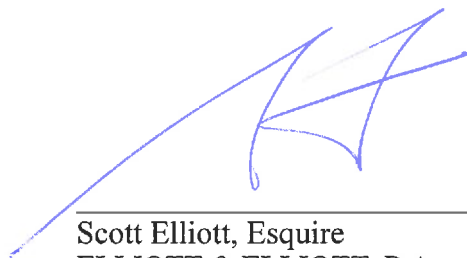
The ORS further argues that, because PWR seeks to recover \$11,120 in SWWC Board related costs during the 2020 test year, the ORS is entitled to all of the 2019 SWWC Board meeting minutes and presentations, which occurred 8 to 20 months *before* SWWC acquired PWR's parent company. In a good faith effort to cooperate with the ORS, subject to its objections, SWWC authorized the production of the 2020 Board meeting minutes and presentations and UWCs and 2019 materials that referenced PWR or its then corporate parents. But as PWR is not seeking recovery of 2019 SWWC Board costs, the 2019 Board meeting minutes and presentations have no bearing on the rate request.

Last, the ORS argues that the 2019 Board meeting minutes and presentations are required for it to ascertain whether SWWC's future acquisitions will have an impact on PWR's costs and expenses. Again, the relevant costs and expenses to this rate case are those incurred in the 2020 test year. Any theoretical impact of uncertain future acquisitions is both speculative and irrelevant.

CONCLUSION

The ORS should have tailored its discovery requests to include only relevant matters. PWR produced more than 400 pages of its parent company's Board meeting minutes and presentations and UWCs for the test year at issue – 2020. PWR has also provided the ORS with the three pages from its 2019 Board meeting minutes and presentation that make no references to PWR but do have passing references to its then parent entities – documents that were prepared a year before SWWC acquired PWR's then parent company. PWR has more than met its discovery obligations to the ORS. The ORS motion to compel lacks merit and should be denied.

Respectfully submitted, this the 17th day of September 2021.



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*Attorneys for Palmetto Wastewater
Reclamation, Inc.*

CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the pleading(s) indicated below by mailing a copy of same to them via Electronic Mail on the date indicated below:

RE: Application of Palmetto Wastewater Reclamation, Inc. for
Adjustment of Rates and Charges (Increase) and Terms and
Conditions of Sewer Service
Docket No. 2021-153-S

PARTIES SERVED: **VIA ELECTRONIC MAIL**
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PLEADINGS: RETURN TO ORS MOTION TO COMPEL

This 17th day of September 2021.



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